

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff.

vs.

DARNELL ANTHONY FOX,

Defendant.

:
:
:
:
:
:
:
:
:
:
:

CASE NO. 1:18-cr-00390

OPINION & ORDER
[Resolving Docs. [35](#) & [41](#)]

JAMES S. GWIN, UNITED STATES DISTRICT COURT JUDGE:

Defendant Darnell Anthony Fox requests a reduced sentence under the compassionate release statute, 18 U.S.C. § 3582.¹ The Government opposes Fox's request.²

For the reasons stated below, the Court **DENIES** Fox's motion for compassionate release.

I. Background

On August 15, 2018 Defendant Fox pled guilty to three counts of possession with intent to distribute a controlled substance and one count of felon in possession of a firearm.³ On December 13, 2018 this Court sentenced Fox to 60-months imprisonment.⁴ Fox has been in custody since January 29, 2019.⁵ He is scheduled for release in October 2022.⁶

¹ Docs. [35](#), [41](#).

² Doc. [47](#).

³ Doc. [18](#).

⁴ Doc. [47](#) at 2.

⁵ Doc. [41](#) at 2.

⁶ *Id.*

Case No. 1:18-cr-00390

GWIN, J.

II. Discussion

On June 22, 2020, Fox moved for compassionate release.⁷ Fox requests a sentence reduction due to several medical conditions that he claims increase his risk of severe illness if he contracts COVID-19.⁸

The Government opposes. The Government observes that the CDC has not identified any of Fox's medical conditions as increasing the risk of complications from COVID-19.⁹ The Government also states that Fox would pose a danger to the community because his conviction requires a minimum of 60 months incarceration.¹⁰

A. Exhaustion

The Court may modify a defendant's term of imprisonment upon a motion from the defendant once 30 days have expired since the warden of the defendant's facility received such a motion from the defendant.¹¹

Here, Fox states that more than 30 days have past since he sent the warden a request for release; the warden denied his request on June 8, 2020.¹² The government responds that Fox's claim of administrative exhaustion is unsubstantiated as Fox failed to attach the request or denial to either his original or supplemental motion.¹³ Still, the government acknowledges that there is an administrative note in Fox's medical records indicating a social worker met with Fox on June 8, 2020 to discuss the warden's denial of

⁷ Doc. [35](#).

⁸ Doc. [41](#).

⁹ Doc. [47](#) at 4-5.

¹⁰ *Id.* at 7-8.

¹¹ [18 U.S.C. § 3582\(c\)\(1\)\(A\)](#).

¹² Doc. [41](#) at 2.

¹³ Doc. [47](#) at 9.

Case No. 1:18-cr-00390

GWIN, J.

Fox's request for release.¹⁴ Because the Court finds that more than 30 days have passed since Fox's request, he meets the statutory exhaustion requirement.

B. Eligibility

To grant compassionate release, the Court must find that "extraordinary and compelling reasons warrant such a reduction" and "that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."¹⁵ The Court must also consider the sentencing factors set forth in 18 U.S.C. § 3553.¹⁶

The applicable policy statement instructs that extraordinary and compelling reasons for a sentence reduction fall into four categories: (i) medical conditions, (ii) age, (iii) family circumstances, and (iv) other reasons.¹⁷

Fox argues that he suffers from medical conditions that increase the risk of serious illness if he contracts COVID-19.¹⁸ Specifically, he states that he suffers from peripheral artery disease, lung nodules, and pre-diabetes.¹⁹

Fox's COVID-19 argument is not persuasive. As the Government points out, the CDC does not recognize any of Fox's medical conditions as increasing the risk of complications from COVID-19.²⁰ While diabetes can increase the likelihood of severe illness from COVID-19, Fox does not currently suffer from diabetes and he has received nutrition education from a registered dietitian at his facility.²¹

¹⁴ Doc. [47](#) at 9; Doc. [41-1](#) at 27.

¹⁵ [18 U.S.C. § 3582\(c\)\(1\)\(A\)](#).

¹⁶ *Id.*

¹⁷ [USSG § 1B1.13 cmt. n.1](#).

¹⁸ Doc. [35](#); [41](#) at 2-4.

¹⁹ Doc. [41](#) at 2-4.

²⁰ Doc. [47](#) at 5.

²¹ Doc. [41-1](#) at 4.

Case No. 1:18-cr-00390

GWIN, J.

Fox's peripheral artery disease has caused one blood clot in his left leg;²² it was removed with minimally invasive surgery.²³ And Fox's benign lung nodules require only CT monitoring.²⁴ Fox is otherwise a healthy 37-year-old.

Considering all relevant factors, the Court does not find that extraordinary and compelling reasons warrant Fox's compassion release request.

III. Conclusion

For the foregoing reasons, the Court **DENIES** without prejudice Fox's request for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A)(i).

IT IS SO ORDERED.

Dated: September 14, 2020

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

²² Doc. [41-1](#) at 1.

²³ Doc. [41](#) at 3.

²⁴ *Id.*